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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,509	02/05/2002	Gordon H. Epstein	20450.53	6000

7590 03/03/2003

ATTN: Bruce M. Canter
OPPENHEIMER WOLFF & DONNELLY LLP
840 Newport Center Drive, Suite 700
Newport Beach, CA 92660

EXAMINER	
THISSELL, JEREMY	
ART UNIT	PAPER NUMBER
3763	

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,509

Applicant(s)

MF

EPSTEIN, GORDON H.

Examiner

Jeremy T. Thissell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

In response to the restriction requirement, Applicant has cancelled all previously pending claims 1-17 and submitted new claims 18-36 all drawn to a method of applying adhesive. This is being construed as an election of group III, originally claimed by claims 9, 16, and 17 as set forth in the restriction requirement.

Further, the new claims do not include a claim 21. Claims 22-36 have been renumbered as claims 21-35, under 37 C.F.R 1.126. The dependencies of these claims have been appropriately changed as well.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over The "Mayo Clinic" article to McCarthy et al (1987).

The article indicates in figure two that a double lumen catheter is used for injection of thrombin and fibrinogen component of fibrin glue and that this catheter fits into the side port of an endoscope. It is well known that the two above materials mix to

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form the fibrin glue. It is also well known that endoscopes have suction lumens that are used to clean and clear the surgical area before and after the treatment so the doctor can see the area that the surgical procedure is being performed and clean up any debris when they are finished. It is also well known in the art of endoscopes to use the suction lumen to remove any excess material during the procedure. Therefore, it would have been obvious to one of ordinary skill in the art to utilize an endoscope with a suction lumen wherein the double lumen fibrin glue dispensing catheter is positioned within the tool lumen as taught by McCarthy, in order to provide the doctor the proper visualization of the work area within the body of the patient and to make sure the surgical site is clean of debris and excess material when the procedure is finished.

Claims 24 and 28-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy in view of Miller et al (US Pat No. 4,874,368).

McCarthy teaches all the claimed subject matter except for the two components being mixed prior to exiting the device. Miller teaches a fibrin glue delivery system wherein the two components mix before exiting the device. It would have been obvious to one of ordinary skill in the art at the time the instant invention was made to use a device like that of Miller to inject the fibrin in the procedure of McCarthy to avoid any problems with the two components not adequately mixing due to them coming out of separate tubes. The examiner takes the position that it would have been obvious to either substitute the device of Miller for the catheter in McCarthy, and/or it would have been obvious to form the catheter in McCarthy such that the two lumens merge prior to exiting the distal tip through a single port as one lumen.

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Contacts


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy T. Thissell whose telephone number is (703) 305-5261. The examiner can normally be reached on 8:30-7:00 Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached at (703) 308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jt

February 23, 2003


BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3760